

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM E. KALT,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:11-cv-00856

RONALD MARTIN, et al.,

Defendants.

REPORT AND RECOMMENDATION

This matter was before the Court for a scheduling conference after the Honorable Jeffrey Hughes presiding over a Chapter 13 bankruptcy proceeding in which William E. Kalt was the debtor referred the adversary proceeding to this Court under *Stern v. Marshall*, ___U.S.___, 131 S. Ct. 2594 (2011). The Court adopted this Report and Recommendation on December 29, 2011 (Dkt. 30). The Chapter 13 bankruptcy was voluntarily dismissed by William E. Kalt on February 13, 2012.

The Court now recommends that the adversary proceeding be dismissed with prejudice and with sanctions for two reasons.

First, although Mr. Kalt was sent notice of the hearing on January 24, 2012, he failed to appear and also failed to contact the Court. Thus, the Court recommends that this matter be dismissed with prejudice for failure to prosecute pursuant to Fed. R.Civ. P. 42(b).

Second, the adversary proceeding related to Mr. Kalt's assertion of various state law claims against Ronald Martin and Carolyn Martin. The Court no longer has ancillary jurisdiction over

these claims because of the dismissal of the Chapter 13 Bankruptcy Petition by Mr. Kalt. The Court discerns no other basis that this Court has subject matter jurisdiction.

Finally, counsel for the Martins, David J. Anderson, requested orally that Mr. Kalt be sanctioned for failure to appear in the amount of Mr. Anderson's expenses and attorney's fees. Mr. Anderson was instructed to file a sworn affidavit itemizing his hourly rate and those expenses. Therefore, the Court also recommends that William E. Kalt be sanctioned in the amount sworn to by Mr. Anderson subsequent to this Report and Recommendation.

Respectfully submitted,

Date: February 28, 2012

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).